

HOUSE BILL No. 1176

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-15; IC 4-21.5-2-7; IC 5-14-1.5-6.5; IC 5-28; IC 20-7.5-1.

Synopsis: Collective bargaining for public employees. Permits certain governmental employees and noncertificated employees of school corporations to form and join unions. Establishes a five member public employees relations board. Establishes a procedure for the selection and decertification of an exclusive bargaining representative. Establishes employer and employee rights. Specifies prohibited practices. Requires the employer to bargain collectively when an exclusive representative has been certified. Establishes negotiation, mediation, factfinding, and binding arbitration procedures. Establishes mandatory subjects of negotiation. Requires a grievance procedure to be included in each collective bargaining agreement. Makes strikes by certain public employees unlawful and establishes penalties for strikes.

Effective: Upon passage; July 1, 2004.

Adams T, Ligget

January 13, 2004, read first time and referred to Committee on Labor and Employment.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1176

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-15-1.8-3.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2004]: **Sec. 3.5. There is created within the**
4 **department the office of chief negotiator, who is:**

5 (1) **appointed by and serves at the pleasure of the governor;**
6 **and**

7 (2) **responsible for negotiating all collective bargaining**
8 **agreements of the executive branch (as defined in**
9 **IC 5-28-1-12).**

10 **The chief negotiator may be the director.**

11 SECTION 2. IC 4-15-2-35 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 35. (a) This section**
13 **does not apply to an individual who is a member of a collective**
14 **bargaining unit that has entered into a collective bargaining**
15 **agreement under IC 5-28 for complaints arising while the**
16 **agreement is in force.**

17 **(b) Any regular employee may file a complaint if his the**



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1 **employee's** status of employment is involuntarily changed or if ~~he~~ **the**
 2 **employee** deems conditions of employment to be unsatisfactory.
 3 However, the complaint procedure shall be initiated as soon as possible
 4 after the occurrence of the act or condition complained of and in no
 5 event shall be initiated more than thirty (30) calendar days after the
 6 employee is notified of a change in ~~his~~ **the employee's** status of
 7 employment or after an unsatisfactory condition of employment is
 8 created. Failure to initiate the complaint procedure within such time
 9 period shall render the complaint procedure unavailable to the
 10 employee. The following complaint procedure shall be followed:

11 **Step I: (1)** The complaint procedure shall be initiated by a
 12 discussion of the complaint by the employee and ~~his~~ **the**
 13 immediate supervisor and, if a mutually satisfactory settlement
 14 has not been made within two (2) consecutive working days, such
 15 complaint may be referred to **Step H: subdivision (2).**

16 **Step H: (2)** The complaint shall be reduced to writing and
 17 presented to the intermediate supervisor. If a mutually satisfactory
 18 settlement has not been reached within four (4) consecutive
 19 working days, ~~such~~ **the** complaint may then be referred to the
 20 appointing authority.

21 **Step H: (3)** The appointing authority or ~~his~~ designated
 22 representative shall hold ~~such~~ hearings and conduct ~~such~~
 23 investigations as ~~he~~ **the appointing authority or designated**
 24 **representative** deems necessary to render a decision and shall
 25 make ~~such~~ a decision in writing within ten (10) consecutive
 26 working days.

27 **(4)** Should the appointing authority or ~~his~~ designated
 28 representative not find in favor of the employee, the complaint
 29 may be submitted within fifteen (15) calendar days to the state
 30 personnel director. The director or ~~his~~ **the director's** designee
 31 shall review the complaint and render a decision within fifteen
 32 (15) calendar days. If the decision is not agreeable to the
 33 employee, an appeal may be submitted by the employee in writing
 34 to the commission no later than fifteen (15) calendar days from
 35 the date the employee has been given notice of the action taken by
 36 the personnel director or ~~his~~ **the director's** designee. After
 37 submission of the appeal, the commission shall, prior to rendering
 38 its decision, grant the appealing employee and the appointing
 39 authority a public hearing, with the right to be represented and to
 40 present evidence. With respect to all appeals, the commission
 41 shall render its decision within thirty (30) days after the date of
 42 the hearing on the appeal. If the commission finds that the action

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1 against the employee was taken on the basis of politics, religion,
 2 sex, age, race, or because of membership in an employee
 3 organization, the employee shall be reinstated to ~~his~~ **the** position
 4 without loss of pay. In all other cases the appointing authority
 5 shall follow the recommendation of the commission which may
 6 include reinstatement and payment of salary or wages lost by the
 7 employee which may be mitigated by any wages the employee
 8 earned from other employment during a dismissed or suspended
 9 period.

10 **(5)** If the recommendation of the commission is not agreeable to
 11 the employee, the employee, within fifteen (15) calendar days
 12 from receipt of the commission recommendation, may elect to
 13 submit the complaint to arbitration. The cost of arbitration shall
 14 be shared equally by the employee and the state of Indiana. The
 15 commissioner of labor shall prepare a list of three (3) impartial
 16 individuals trained in labor relations, and from this list each party
 17 shall strike one (1) name. The remaining arbitrator shall consider
 18 the issues which were presented to the commission and shall
 19 afford the parties a public hearing with the right to be represented
 20 and to present evidence. The arbitrator's findings and
 21 recommendations shall be binding on both parties and shall
 22 immediately be instituted by the commission.

23 SECTION 3. IC 4-21.5-2-7 IS ADDED TO THE INDIANA CODE
 24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 25 1, 2004]: **Sec. 7. (a) This article applies to the following:**

26 **(1) The public employees relations board (PERB) established**
 27 **by IC 5-28-2-1.**

28 **(2) Issue arbitration under IC 5-28-14.**

29 **(b) This article does not apply to grievance arbitration under**
 30 **IC 5-28-15.**

31 SECTION 4. IC 5-14-1.5-6.5 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 6.5. (a) Whenever a**
 33 **governing body, or any person authorized to act for a governing body,**
 34 **meets with an employee organization, or any person authorized to act**
 35 **for an employee organization, for the purpose of there is collective**
 36 **bargaining or discussion between the parties under IC 20-7.5 or**
 37 **IC 5-28, the following apply:**

38 **(1) Any party may inform the public of the status of collective**
 39 **bargaining or discussion as it progresses by release of factual**
 40 **information and expression of opinion based upon factual**
 41 **information.**

42 **(2) If a mediator is appointed, any report the mediator may file at**

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the conclusion of mediation is a ~~public record open to public inspection~~. **confidential.**

(3) If a factfinder is appointed, any hearings the factfinder holds must be open at all times for the purpose of permitting members of the public to observe and record them. Any findings and recommendations the factfinder makes are public records ~~open to public inspection~~ **subject to inspection and copying** as provided by IC 20-7.5-1-13(e) ~~or any other applicable statute relating to factfinding in connection with public collective bargaining; and~~ **IC 5-28-13-2(e).**

(4) **If an arbitrator is appointed, all decisions, opinions, or awards made by an arbitrator are subject to public inspection and copying under IC 5-14-3-3.**

(b) This section supplements and does not limit any other provision of this chapter.

SECTION 5. IC 5-28 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

ARTICLE 28. COLLECTIVE BARGAINING

Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Bargaining unit" means classes or groups of jobs or positions that are held by employees whose collective interests may be suitably represented by an employee organization for collective bargaining.

Sec. 3. "Binding arbitration" refers to the procedures prescribed under IC 5-28-14 and IC 5-28-15 under which parties involved in an impasse or a grievance submit their differences to a third party for a final and binding decision.

Sec. 4. "Chief negotiator" means the individual or designee appointed to serve as the bargaining representative of the employer.

Sec. 5. "Confidential employee" means an employee:

- (1) who works in the personnel office of the employer;**
- (2) who has access to confidential or discretionary information that may be used by the employer in negotiating a collective bargaining agreement under this article;**
- (3) who works in a close and continuing working relationship with:**
 - (A) an individual holding elected office; or**
 - (B) individuals who represent the employer in negotiations**

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- 1 under this article;
- 2 (4) whose:
- 3 (A) functional responsibilities; or
- 4 (B) knowledge;
- 5 concerning employee relations makes the employee's
- 6 membership in an employee organization incompatible with
- 7 the employee's duties; or
- 8 (5) who is a personal secretary of:
- 9 (A) the chief administrative or executive officer of an
- 10 agency;
- 11 (B) a deputy or an assistant to the chief administrative or
- 12 executive officer of an agency; or
- 13 (C) an individual holding elected office.
- 14 Sec. 6. "Deficit financing" means expenditures that exceed
- 15 money legally available to the employer in a budget year.
- 16 Sec. 7. "Eligible political subdivision" means the following:
- 17 (1) A county, city, town, or township (as defined in IC 36-1-2)
- 18 that:
- 19 (A) has a population of less than five thousand (5,000) and
- 20 has adopted an ordinance or passed a resolution under
- 21 IC 5-28-3-2; or
- 22 (B) has a population of at least five thousand (5,000).
- 23 (2) A school corporation (as defined in IC 20-10.1-1-1)
- 24 regarding the school corporation's noncertificated employees
- 25 (as defined in IC 20-7.5-1-2(g)).
- 26 Sec. 8. "Employee" means an individual who is employed by an
- 27 employer, unless the individual is any of the following:
- 28 (1) An intermittent, a temporary, or a student employee.
- 29 (2) A member of a board or commission.
- 30 (3) A confidential employee.
- 31 (4) A supervisor.
- 32 (5) A managerial employee.
- 33 (6) A patient or resident of a state institution.
- 34 (7) An individual in the custody of the department of
- 35 correction.
- 36 (8) The chief administrative or executive officer of an agency.
- 37 (9) An attorney whose responsibilities include providing legal
- 38 advice or performing legal research.
- 39 (10) A physician or a dentist.
- 40 (11) An administrative law judge.
- 41 (12) An individual who performs internal investigations.
- 42 (13) A neutral.

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(14) An employee of an eligible political subdivision who is not included for coverage under this article under the terms of an ordinance or a resolution adopted under IC 5-28-3-2.

(15) A local public safety officer.

(16) A professional employee of the department of commerce who participates in economic development matters.

(17) A certificated employee (as defined in IC 20-7.5-1-2(f)) of a school corporation.

Sec. 9. "Employee organization" means an organization:

(1) in which employees participate; and

(2) that exists in whole or in part to deal with an employer concerning:

(A) wages;

(B) hours;

(C) settlement of grievances; and

(D) other terms and conditions of employment.

Sec. 10. (a) "Employer" means the following:

(1) The executive branch.

(2) A state educational institution (as defined in IC 20-12-0.5-1).

(3) An eligible political subdivision.

(b) The term does not include any of the following:

(1) The senate, the house of representatives, the legislative services agency, or any commission or agency of the legislative department of the state.

(2) The judicial branch of state government, including any commission or agency of the judicial branch.

(3) A school corporation, as to the school corporation's certificated employees.

(4) Unless specifically included under section 12 of this chapter, the office of an individual holding an elected office.

(5) Bodies corporate and politic.

(6) The budget agency.

(7) Uniformed members of the Indiana army national guard or Indiana air national guard.

(8) The state personnel department.

(9) The public employees relations board.

(10) The education employment relations board.

(11) The state board of accounts.

Sec. 11. "Exclusive bargaining representative" means an employee organization that has been certified as the result of a representation proceeding under IC 5-28-8 to be the sole

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representative of the members of a bargaining unit.

Sec. 12. "Executive branch" means the following:

- (1) Those agencies (as defined in IC 4-22-2-3) under the direct authority of the governor.
- (2) Those agencies under the direct authority of any other elected state officer electing coverage under IC 5-28-3-1.

Sec. 13. "Factfinding" means the procedure by which a neutral makes findings of fact and recommendations for resolution of an impasse under IC 5-28-13.

Sec. 14. "Impasse" means the failure of the employer and an exclusive bargaining representative to reach agreement during the course of negotiations.

Sec. 15. "Intervening employee organization" means an employee organization that demonstrates to the PERB a showing of interest of at least thirty percent (30%) of the members of a bargaining unit.

Sec. 16. "Issue" means broad subjects of negotiation that are presented to an arbitrator under IC 5-28-14.

Sec. 17. "Just cause", as the term pertains to employees, includes any of the following:

- (1) Falsification of an employment application to obtain employment through subterfuge.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Unsatisfactory attendance, if the employee is unable to show good cause for the employee's absences or tardiness.
- (4) Damaging the employer's property through willful negligence.
- (5) Refusing to obey lawful instructions.
- (6) Reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs:
 - (A) on the employer's premises; or
 - (B) while operating the employer's vehicles during work hours.
- (7) Conduct endangering the safety of:
 - (A) the employee;
 - (B) other employees;
 - (C) clients; or
 - (D) others entrusted to the employee's care.
- (8) Incarceration following the conviction of a misdemeanor or felony.
- (9) A breach of a duty in connection with the employee's

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employment that is reasonably owed the employer by an employee.

Sec. 18. "Local public safety officers" means police officers and firefighters employed by an eligible political subdivision.

Sec. 19. "Managerial employee" means an individual who is:

(1) engaged predominantly in executive and management functions; or

(2) charged with the responsibility of directing the effectuation of management policies and practices.

Sec. 20. "Mediation" means assistance by an impartial third party to reconcile an impasse through persuasion, suggestion, and advice.

Sec. 21. "Neutral" includes the following:

(1) A factfinder.

(2) An arbitrator.

(3) A mediator.

Sec. 22. "PERB" refers to the public employees relations board established by IC 5-28-2-1.

Sec. 23. "State employee" means an employee of the executive branch.

Sec. 24. "Strike" means a public employee's:

(1) refusal to report to duty;

(2) willful absence from the public employee's assigned work area;

(3) stoppage of work; or

(4) abstinence in whole or in part from the full, faithful, and proper performance of the public employee's duties of employment;

in concerted action with other persons or public employees without the lawful approval of the employer.

Sec. 25. "Supervisor" means an individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, direct, or discipline an employee, or to adjust a grievance, or to recommend such action, if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Sec. 26. "Temporary employee" means an individual who is employed in a temporary position for not more than ninety (90) days.

Sec. 27. "University employee" means an employee of a state educational institution (as defined in IC 20-12-0.5-1).

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Chapter 2. Public Employees Relations Board

Sec. 1. The public employees relations board (PERB) is established.

Sec. 2. (a) The PERB has five (5) members who are appointed by the governor. Not more than three (3) members may be members of the same political party.

(b) A PERB member may not:

(1) be:

(A) a representative of; or

(B) employed by;

an employee organization or an affiliate of an employee organization; or

(2) hold any other public office.

(c) The term of each member is four (4) years.

Sec. 3. A vacancy on the PERB shall be filled by the governor.

Sec. 4. (a) The governor shall designate a member of the PERB to serve as the chair. The chair:

(1) shall serve as the full-time director; and

(2) must possess educational credentials and experience in labor relations matters as a prerequisite to designation as the chair.

(b) The chair shall give full time to the chair's duties. The chair of the PERB shall not engage in another business, vocation, or employment.

Sec. 5. (a) Each member of the PERB is entitled to compensation as fixed by the state personnel director, subject to the approval of the budget agency.

(b) Each member of the PERB is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in state policies and procedures established by the Indiana department of administration and approved by the budget agency.

Sec. 6. A majority of the PERB members constitutes a quorum.

Sec. 7. The PERB shall do the following:

(1) Process and make determinations concerning prohibited practices complaints under IC 5-28-11.

(2) Provide impasse services.

(3) Provide research services.

(4) Process and make determinations concerning bargaining unit and representation matters under this article.

(5) Establish the qualifications of neutrals after consultation

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with the designated representatives of the employer and the exclusive bargaining representatives.

(6) Maintain a register of neutrals for use by the employer and exclusive bargaining representatives drawn from a nationwide pool of qualified neutrals.

(7) Enforce the PERB's own decisions and determinations according to IC 4-21.5.

Sec. 8. The PERB may do the following:

(1) Appoint staff, including attorneys who may represent the PERB in legal proceedings, subject to IC 4-15-2, necessary for the performance of the PERB's duties. However, the staff director and chief counsel for the PERB are not subject to IC 4-15-2.

(2) Adopt rules under IC 4-22-2 to carry out this article.

(3) Use full-time employees or establish a panel of individuals to provide mediation services.

(4) Contract for the services of private legal counsel to represent the PERB in legal proceedings.

(5) Contract for the services of other professionals.

(6) Designate a PERB member or other individuals as administrative law judges.

(7) Use the services of volunteers.

(8) Issue subpoenas and subpoenas duces tecum.

(9) Hold hearings.

(10) Do all things necessary to carry out this article.

Sec. 9. Parties negotiating collective bargaining agreements under this article shall use the register of neutrals maintained by the PERB unless the parties agree to use another list of neutrals. If the PERB register of neutrals is used to appoint an arbitrator, the parties shall determine by lot which party will first delete a name from the register. The parties shall continue by alternately deleting names until one (1) neutral is selected.

Chapter 3. Opt In

Sec. 1. (a) An elected state officer may elect to include the officer's employees to be subject to this article by submitting a written notice to the PERB.

(b) The notice must be consistent with this article and may not include employees otherwise excluded.

(c) The notice must indicate the agencies or groups of employees for whom the officer is electing inclusion.

(d) Except as provided by subsection (e), an election made under this chapter:

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(1) may not be repealed; and

(2) may be amended to add employees who will be subject to this article.

(e) If an exclusive bargaining representative is decertified under this article, not more than sixty (60) days after decertification an elected state officer may repeal or amend an election made under this chapter as that election applies to employees formerly represented by the decertified employee organization.

Sec. 2. (a) This section applies to a county, city, town, or township with a population of less than five thousand (5,000).

(b) The legislative body of a:

(1) county, city, or town may adopt an ordinance; or

(2) township may pass a resolution;

concerning the applicability of this article to the county, city, town, or township. If an ordinance is adopted or a resolution is passed under this subsection, the county, city, town, or township is an eligible political subdivision for purposes of this article.

(c) An ordinance adopted or a resolution passed under subsection (b) must do the following:

(1) State that the county, city, town, or township elects to be an eligible political subdivision for purposes of this article.

(2) Declare the employees of the county, city, town, or township who will be subject to this article.

(d) Except as provided in subsection (e), an ordinance adopted or a resolution passed under this section:

(1) may not be repealed; and

(2) may be amended to add employees who will be subject to this article.

(e) If an exclusive bargaining representative is decertified under this article, not more than sixty (60) days after decertification the legislative body of the county, city, town, or township may repeal or amend the ordinance adopted or resolution passed under this section as that ordinance or resolution applies to employees formerly represented by the decertified employee organization.

Chapter 4. State Employee Bargaining Units

Sec. 1. This chapter applies only to state employees.

Sec. 2. (a) An employee must be included under one (1) of the twelve (12) bargaining units as follows:

(1) Labor, trades, and crafts classes, including the following:

(A) Carpenters.

(B) Electricians.

(C) Plumbers.

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- 1 (D) Print shop workers.
- 2 (E) Auto mechanics.
- 3 (F) Maintenance workers.
- 4 (G) Similar classes.
- 5 (2) Administrative and technical support that includes clerical
- 6 and administrative nonprofessional classes, including the
- 7 following:
- 8 (A) Typists.
- 9 (B) Secretaries.
- 10 (C) Account clerks.
- 11 (D) Computer operators.
- 12 (E) Office service personnel.
- 13 (F) Personnel who provide support services to
- 14 professionals.
- 15 (G) Other nonprofessional employees who do not meet the
- 16 standards of other nonprofessional units.
- 17 (3) Regulatory, inspection, and licensure nonprofessionals
- 18 that include individuals who review public and commercial
- 19 activities, including the following:
- 20 (A) Tax examiners.
- 21 (B) Driver's license examiners.
- 22 (C) Meat inspectors.
- 23 (D) Similar classes.
- 24 (4) Health and human services nonprofessionals, including the
- 25 following:
- 26 (A) Licensed practical nurses.
- 27 (B) Nursing aides.
- 28 (C) Psychiatric attendants.
- 29 (D) Therapy aides.
- 30 (E) Claims takers.
- 31 (F) Assistant caseworkers.
- 32 (G) Similar classes.
- 33 (5) Regulatory, inspection, and licensure professional
- 34 employees empowered to review certain public and
- 35 commercial activities, including the following:
- 36 (A) Revenue auditors.
- 37 (B) Bank and insurance examiners.
- 38 (C) Public health inspectors.
- 39 (D) Similar classes.
- 40 (6) Health care professionals, including the following:
- 41 (A) Registered nurses.
- 42 (B) Pharmacists.

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- 1 (C) Licensed therapists.
- 2 (D) Similar classes.
- 3 (7) Social services and counseling professionals who provide
- 4 services and benefits to eligible persons, including the
- 5 following:
- 6 (A) Employment and training personnel.
- 7 (B) Welfare caseworkers.
- 8 (C) Social workers.
- 9 (D) Counselors.
- 10 (E) Similar classes.
- 11 (8) Engineering, scientific, and information services
- 12 professionals, including the following:
- 13 (A) Architects.
- 14 (B) Chemists.
- 15 (C) Geologists.
- 16 (D) Civil engineers.
- 17 (E) Computer programmers.
- 18 (F) System analysts.
- 19 (G) Similar classes.
- 20 (9) Professional administrative employees with general
- 21 business responsibilities, including the following:
- 22 (A) Accountants.
- 23 (B) Buyers.
- 24 (C) Administrators.
- 25 (D) Other professional employees who do not meet the
- 26 standards of the other professional units.
- 27 (10) Public safety, protective service workers, and
- 28 institutional security employees, including the following:
- 29 (A) Correctional officers.
- 30 (B) Building guards.
- 31 (C) Firefighters.
- 32 (D) Motor carrier inspectors of the state police
- 33 department.
- 34 (E) Similar classes.
- 35 (11) Sworn police officers, including the following:
- 36 (A) Police employees of the state police department.
- 37 (B) Conservation officers of the department of natural
- 38 resources.
- 39 (C) Excise police of the alcohol and tobacco commission.
- 40 (12) Teachers at state institutions whose compensation is
- 41 determined under any of the following:
- 42 (A) IC 11-10-5-4.

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1 (B) IC 12-24-3-4.

2 (C) IC 16-19-6-7.

3 (b) Bargaining units other than those listed in subsection (a)
4 may be established by the PERB.

5 Sec. 3. The director of the state personnel department shall
6 determine the assignment of each state employee, based on the
7 state employee's job classification, to a bargaining unit under
8 section 2 of this chapter unless a state employee or an employee
9 organization challenges the assignment.

10 Sec. 4. (a) If a state employee or an employee organization
11 challenges a determination under section 3 of this chapter by filing
12 a bargaining unit amendment and clarification petition under
13 IC 5-28-8, the assignment is void, and the PERB shall determine
14 the appropriate assignment.

15 (b) In determining the appropriateness of the assignment of a
16 state employee to a unit in section 2 of this chapter, the PERB shall
17 consider the following:

18 (1) The principles of efficient administration of government,
19 including limiting the fragmentation of government
20 administrative authority.

21 (2) The existence of a community of interest among the
22 employees assigned to the bargaining unit.

23 (3) The recommendations of the parties involved.

24 Sec. 5. Each bargaining unit under this chapter must be
25 established on a statewide basis.

26 Chapter 5. Bargaining Unit Determination

27 Sec. 1. This chapter does not apply to state employees or state
28 employee bargaining units.

29 Sec. 2. (a) An employee, employer, or employee organization
30 may file a petition with the PERB seeking the determination of an
31 appropriate bargaining unit.

32 (b) A petition may be filed under this section even if no
33 representation petition is pending under IC 5-28-8. If a
34 representation petition is pending concerning any of the employees,
35 the PERB may combine the petitions.

36 Sec. 3. The board of trustees of each state educational institution
37 shall designate an individual to assign each employee of the state
38 educational institution, based on the employee's job classification,
39 to a bargaining unit.

40 Sec. 4. An employee of a state educational institution or an
41 employee organization may challenge a determination under
42 section 3 of this chapter by filing a bargaining unit amendment and

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clarification petition under IC 5-28-8.

**Chapter 6. Voluntary Recognition of an Employee Organization
as an Exclusive Bargaining Representative**

Sec. 1. This chapter does not apply to the following:

- (1) State employees.
- (2) State employee bargaining units.
- (3) University employees.
- (4) University employee bargaining units.

Sec. 2. (a) If:

- (1) an employee organization submits a written request to an employer that states that a majority of the members of a bargaining unit want the employee organization to be the bargaining unit's exclusive bargaining representative; and
- (2) the employer wants to recognize an employee organization under this chapter;

the employer shall post a notice of the employee organization's request for at least thirty (30) days.

(b) If no intervening employee organization petitions the PERB for a representation proceeding during the thirty (30) day posting period, the employee organization is the exclusive bargaining representative for the bargaining unit.

Sec. 3. If an intervening employee organization files a petition for a representation proceeding during the thirty (30) day posting period, the PERB shall direct that a representation proceeding be held under IC 5-28-8.

Chapter 7. Historical Recognition of Employee Organization as Exclusive Bargaining Representative

Sec. 1. This chapter does not apply to the following:

- (1) State employees.
- (2) State employee bargaining units.
- (3) University employees.
- (4) University employee bargaining units.

Sec. 2. An employee organization may request historical recognition by submitting a petition to the PERB. The petition must include supporting data and documentation concerning the employee organization's previous representation of the bargaining unit.

Sec. 3. A petition filed under section 2 of this chapter shall be granted by the PERB only if:

- (1) the PERB has given notice to the employer and to employees affected by the petition;
- (2) the employee organization before July 1, 2004:

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(A) was certified after a representation proceeding as the exclusive bargaining representative of the bargaining unit;
 (B) was recognized voluntarily by an employer based on a petition, card check, or other showing of interest; or
 (C) is employer certified by a recognition clause in a collective bargaining agreement; and

(3) a challenge petition is not submitted under section 4 of this chapter during the thirty (30) days after notice is given.

Sec. 4. An employee organization may challenge a historical recognition petition by filing a decertification petition accompanied by signatures of at least thirty percent (30%) of the members of the bargaining unit. However, a challenge may not be filed under this section if the historical recognition petition is supported by a valid:

- (1) bargaining agreement that has been in effect for less than two (2) years;
- (2) card check or other written showing of interest completed not more than two (2) years before the filing of the historical recognition petition; or
- (3) election held not more than two (2) years before the filing of the historical recognition petition.

Sec. 5. If the PERB grants a decertification petition, the PERB shall direct that a decertification proceeding be held under IC 5-28-8.

Sec. 6. Before issuing an order certifying an employee organization under this chapter as the exclusive bargaining representative of a bargaining unit, the PERB shall determine the appropriateness of the bargaining unit.

Chapter 8. Representation Proceedings

Sec. 1. The following proceedings may be held under this chapter:

- (1) Certification of an employee organization as the exclusive bargaining representative of a bargaining unit.
- (2) Decertification of an employee organization as the exclusive bargaining representative of a bargaining unit.
- (3) Decertification of an employee organization that has petitioned for historical recognition as the exclusive bargaining representative of a bargaining unit.
- (4) An intervening employee organization challenge to an employer's voluntary recognition of an employee organization as the exclusive bargaining representative of a bargaining unit.
- (5) Bargaining unit amendment and clarification.

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(6) Employer verification of a bargaining representative.

Sec. 2. A petition for a representation proceeding under section 1(1), 1(2), or 1(3) of this chapter may be filed with the PERB by an employee or employee organization and must include a showing of interest of at least thirty percent (30%) of the employees within the bargaining unit.

Sec. 3. A verification under section 1(6) of this chapter may be filed by the employer if at least one (1) employee organization has presented a claim to be the exclusive bargaining representative of any of the employees of the employer.

Sec. 4. (a) The PERB shall notify interested employee organizations of a proceeding under this chapter.

(b) The PERB shall allow on the ballot any intervening employee organization.

Sec. 5. Not later than thirty (30) days after the filing of a petition under this chapter, the PERB shall issue an order determining the appropriateness of the assignment of an employee to a bargaining unit, if applicable, and, where appropriate, direct that an election be held under this chapter.

Sec. 6. A bargaining unit may not include professional and nonprofessional employees.

Sec. 7. (a) A representation proceeding held under this chapter:

(1) must be by secret ballot;

(2) may not be held unless one (1) year has elapsed since the last representation proceeding if there is no recognized exclusive representative; and

(3) may not:

(A) be held unless two (2) years have elapsed since the last representation proceeding if there is an exclusive representative and an agreement ratified by both parties; or

(B) be held later than five (5) years after the last proceeding unless no party petitions the PERB for a representation proceeding or unless otherwise provided for in a collectively bargained agreement.

(b) The rules adopted by the PERB under this article must provide for a thirty (30) day period in advance of the date fixed for the initiation of negotiations under IC 5-28-12 during which a decertification petition concerning employees of eligible political subdivisions may be filed. The PERB may order a representation proceeding based on a decertification petition filed under this subsection.

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(c) The PERB and an employer shall provide employees a liberal opportunity to participate in elections held under this chapter. Mail-in ballots may be used if agreed to by the parties.

(d) Absentee ballots may be used in an election under this chapter.

Sec. 8. The ballot used for an election under this chapter, other than a runoff election, must include a choice of "no union representation".

Sec. 9. Not later than ten (10) days after the PERB issues an order directing a representation proceeding under this article, the employer shall submit to each employee organization whose name will appear on the ballot the names and addresses of the employees entitled to participate in the representation proceeding under this chapter.

Sec. 10. An employer, an employee, or an employee organization may challenge an employee's right to vote in a representation proceeding. The PERB shall resolve the challenge under rules the PERB adopts.

Sec. 11. If, as a result of an election under this chapter:

- (1) an employee organization receives a majority of the votes cast, the PERB shall certify that employee organization as the exclusive bargaining representative of the bargaining unit;
- (2) the "no union representation" choice receives a majority of the votes cast, the PERB shall order that the bargaining unit will not be represented by an employee organization; or
- (3) no choice receives a majority of the votes cast, the PERB shall order a runoff election:

(A) between the two (2) choices receiving the greatest number of votes; or

(B) if two (2) choices receive the second greatest number of votes, among the three (3) choices receiving the greatest number of votes.

Sec. 12. If, as the result of a runoff election under this chapter:

- (1) an employee organization receives a majority of the votes cast, the PERB shall certify that employee organization as the exclusive bargaining representative of the bargaining unit;
- (2) the "no union representation" choice, if any, receives a majority of the votes cast, the PERB shall order that the bargaining unit will not be represented by an employee organization; or
- (3) no choice receives a majority of the votes cast, the PERB shall order another runoff election:

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- 1 (A) between the two (2) choices receiving the greatest
- 2 number of votes; or
- 3 (B) if two (2) choices receive the second greatest number of
- 4 votes, among the three (3) choices receiving the greatest
- 5 number of votes.

6 **Chapter 9. Decertification of Employee Organization as**
7 **Exclusive Bargaining Representative**

8 **Sec. 1.** An employee organization that has been certified as the
9 exclusive bargaining representative of a bargaining unit shall be
10 decertified as the exclusive bargaining representative of the
11 bargaining unit under this chapter if a majority of the employees
12 vote in an election under IC 5-28-8:

- 13 (1) not to be represented by an exclusive bargaining
- 14 representative; or
- 15 (2) to be represented by a different employee organization.

16 **Sec. 2.** Petitions for decertification of an exclusive bargaining
17 representative may be filed by an:

- 18 (1) employee; or
- 19 (2) employee organization.

20 **Sec. 3. (a)** The PERB shall, not later than thirty (30) days after
21 the filing of a petition under section 2 of this chapter, issue an
22 order granting or denying the petition. If the PERB grants the
23 petition, the PERB shall direct that a representation proceeding be
24 held under IC 5-28-8.

25 (b) A petition submitted by an employee or employee
26 organization must include the signatures of at least thirty percent
27 (30%) of the employees within a bargaining unit who request:

- 28 (1) representation by an employee organization other than the
- 29 current exclusive bargaining representative; or
- 30 (2) no representation by any employee organization.

31 (c) The PERB shall notify the recognized employee organization
32 of a petition under this section.

33 **Chapter 10. Employer and Employee Rights**

34 **Sec. 1.** An employer has the right to do the following:

- 35 (1) Direct the work of the employer's employees.
- 36 (2) Hire, classify, evaluate, promote, transfer, assign, and
- 37 retain employees.
- 38 (3) Suspend, demote, reassign, or discharge employees for just
- 39 cause.
- 40 (4) Maintain the efficiency of governmental operations.
- 41 (5) Relieve an employee from duties because of a lack of work
- 42 or funds.

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(6) Determine and implement the methods, means, assignments, and personnel by which the employer's operations are to be conducted.

(7) Initiate, prepare, certify, and administer the employer's budget.

(8) Exercise other powers and duties granted to the employer by law.

Sec. 2. (a) An employee has the right to do the following:

(1) Organize, form, join, and assist an employee organization under this article.

(2) Negotiate collectively through exclusive bargaining representatives chosen under this article.

(3) Engage in other concerted activities for the purpose of collective bargaining, mutual aid, or protection that:

(A) are not prohibited by law; and

(B) do not interfere with the proper performance of another employee's work, unless authorized by a collective bargaining agreement.

(4) Refuse to join or participate in the activities of an employee organization, except for the payment of fair share fees and maintenance of membership in a collective bargaining agreement under this article.

(b) The rights described in this section do not extend to participation in the collective bargaining process where the participation would result in a conflict of interest or otherwise be incompatible with law.

Chapter 11. Prohibited Practices

Sec. 1. (a) It is a prohibited practice for an employer or the employer's designated representative to willfully do the following:

(1) Interfere with, restrain, or coerce an employee in the exercise of rights granted by this article.

(2) Dominate or interfere in the lawful administration of an employee organization.

(3) Encourage or discourage membership in an employee organization by discrimination in hiring or other terms or conditions of employment.

(4) Discharge or discriminate against an employee because the employee has:

(A) filed an affidavit, a petition, or a complaint under this article;

(B) given information or testimony under this article; or

(C) formed, joined, or chosen to be represented by an

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- 1 employee organization.
- 2 (5) Refuse to bargain collectively on matters set forth in
- 3 IC 5-28-12-4(a) with an exclusive bargaining representative
- 4 of a bargaining unit.
- 5 (6) Refuse to execute a bargaining agreement previously
- 6 orally agreed upon.
- 7 (7) Deny the rights accompanying certification granted in this
- 8 article.
- 9 (8) Refuse to participate in good faith in agreed upon impasse
- 10 procedures or those required by IC 5-28-13 through
- 11 IC 5-28-14.
- 12 (9) Engage in a lockout.
- 13 (10) Fail or refuse to comply with this article.
- 14 (b) The expression of any view, argument, or opinion or the
- 15 dissemination of any view, argument, or opinion, whether in
- 16 written, printed, graphic, visual, or oral form, does not constitute
- 17 a prohibited practice under this article if the expression contains
- 18 no threat of reprisal or force or promise of benefit.
- 19 Sec. 2. (a) It is a prohibited practice for an employee, an
- 20 employee organization, or a representative of an employee or an
- 21 employee organization to willfully do the following:
- 22 (1) Interfere with, restrain, coerce, or harass an employee in
- 23 the lawful exercise of the employee's rights granted by this
- 24 article.
- 25 (2) Interfere with, restrain, or coerce the employer in the
- 26 lawful exercise of rights granted by this article or with respect
- 27 to selecting a representative for negotiating collectively for the
- 28 adjustment of grievances.
- 29 (3) Refuse to bargain collectively with the employer on
- 30 matters set forth in IC 5-28-12-4(a).
- 31 (4) Refuse to participate in good faith in agreed upon impasse
- 32 procedures or those required by IC 5-28-13 through
- 33 IC 5-28-14.
- 34 (5) Violate IC 5-28-16. This chapter applies in addition to
- 35 IC 5-28-16.
- 36 (6) Picket in a manner that interferes with ingress and egress
- 37 to the facilities of the employer.
- 38 (7) Fail to meet the duty of fair representation under this
- 39 chapter.
- 40 (8) Fail or refuse to comply with this article.
- 41 (b) The expression of any view, argument, or opinion or the
- 42 dissemination of any view, argument, or opinion, whether in

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1 written, printed, graphic, visual, or oral form, does not constitute
 2 a prohibited practice under this article if the expression contains
 3 no threat of reprisal or force or promise of benefit.

4 Sec. 3. (a) An employer, an employee, or an employee
 5 organization may file a complaint with the PERB alleging that a
 6 prohibited practice has occurred. The complaint must:

7 (1) be filed with the PERB in writing on forms provided by
 8 the PERB;

9 (2) be filed not more than ninety (90) days after the alleged
 10 violation; and

11 (3) be served on the alleged violator in accordance with
 12 IC 4-21.5-3-1.

13 (b) Service under subsection (a)(3) must be made on the office
 14 of the chief negotiator. The chief negotiator shall represent the
 15 executive branch with respect to an alleged prohibited practice.

16 Sec. 4. An alleged violator may file a written response to a
 17 complaint made under section 3 of this chapter. The response must
 18 be filed not later than twenty (20) days after service.

19 Sec. 5. (a) The PERB shall preliminarily review a complaint
 20 filed under section 3 of this chapter and shall:

21 (1) dismiss the complaint if the complaint has no basis in fact
 22 or fails to state a prohibited practice; or

23 (2) notify the complainant and the respondent of the time and
 24 place of a hearing.

25 (b) A hearing under this section shall be held in Marion County
 26 unless an alternative location is agreed to by the parties.

27 (c) The PERB may use informal resolution procedures to aid the
 28 parties in resolving disputes brought under this chapter.

29 Sec. 6. After a hearing held under section 5 of this chapter, the
 30 PERB shall issue written findings. If the PERB finds that the
 31 violation occurred, the PERB may do the following:

32 (1) Enter into a consent order with the violator under which
 33 the violator agrees to discontinue the violation.

34 (2) Order equitable remedies as the PERB determines are
 35 warranted, including reinstatement and payment of back
 36 wages or benefits.

37 (3) Petition a circuit or superior court for injunctive relief.

38 Sec. 7. (a) An exclusive bargaining representative has a duty of
 39 fair representation to all employees within the collective
 40 bargaining unit.

41 (b) An exclusive bargaining representative who fails to comply
 42 with the representative's duty under subsection (a) commits a

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prohibited practice under this section if the exclusive bargaining representative's conduct toward an employee is:

- (1) arbitrary;
- (2) discriminatory; or
- (3) in bad faith.

Chapter 12. Collective Bargaining

Sec. 1. The employer's duty to begin collective bargaining arises when the exclusive bargaining representative submits a written notice regarding entering into negotiations, which must begin not later than thirty (30) days after the notification unless the parties agree mutually to an alternative arrangement.

Sec. 2. (a) The parties to a negotiation under this chapter shall determine collective bargaining negotiations calendar and contract duration.

(b) Contracts continue in effect until replaced by a successor agreement ratified by the parties.

(c) During the status quo period described in subsection (b), in order to permit the successful resolution of the dispute, the employer may not unilaterally change the:

- (1) terms; or
- (2) conditions;

of employment that are issues in dispute.

Sec. 3. The parties to a negotiation under this chapter shall not enter into an agreement that would place the employer in a position of deficit financing.

Sec. 4. (a) The parties to a negotiation under this chapter shall negotiate in good faith concerning the following mandatory subjects of negotiation:

- (1) Wages.
- (2) Hours.
- (3) Conditions of employment.

Conditions of employment must include fair share agreements, maintenance of membership, and dues check-off, notwithstanding IC 22-2-6.

(b) Statutorily created retirement systems and retirement plans qualified under Section 401(a) or 403(b) of the Internal Revenue Code may not be the subject of negotiations under this article.

(c) Matters not specified in subsections (a) and (b) are discretionary subjects of negotiation.

Sec. 5. (a) The employer and the exclusive bargaining representative shall include their positions with respect to impasse procedures in their respective initial bargaining positions under

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section 6 of this chapter. The impasse procedures must conclude in binding arbitration as described in IC 5-28-14, unless the exclusive bargaining representative chooses to be free of binding arbitration impasse resolution before bargaining begins by notifying:

- (1) the PERB; and
- (2) the chief negotiator or designee.

(b) Impasse procedures agreed upon by the parties must provide for as much public access to proceedings and records as is provided for under IC 5-14-1.5, IC 5-14-3, IC 5-28-13, and IC 5-28-14.

(c) If the parties fail to agree upon impasse procedures under this section, the impasse procedures provided in IC 5-28-13 and IC 5-28-14 apply.

Sec. 6. The exclusive bargaining representative shall present the representative's initial bargaining position to the employer at the first bargaining session. The employer shall present the employer's initial bargaining position to the exclusive bargaining representative at the second bargaining session, which shall be held not later than fourteen (14) days following the first bargaining session.

Sec. 7. (a) A collective bargaining agreement may include a fair share agreement. A fair share agreement under this article consists of an agreement between the employer and an exclusive bargaining representative under which part or all of the employees in a bargaining unit are required to pay a share of the costs of the following:

- (1) The collective bargaining process.
- (2) The collective bargaining agreement administration.
- (3) Other duties of the employee organization as the exclusive bargaining representative.

The amount paid as a fair share may not exceed the amount of dues uniformly required of members of the collective bargaining unit.

(b) A fair share payment may not include fees for contributions related to the election or support of a candidate for elected office.

(c) An employee may make a voluntary political contribution in addition to the employee's fair share payment.

Sec. 8. A collective bargaining agreement may include a maintenance membership agreement. Maintenance of membership consists of an agreement between the employer and the exclusive bargaining representative under which membership cannot be dropped until the termination date of the collective bargaining agreement.

Sec. 9. (a) Bargaining sessions held under section 6 of this

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chapter are subject to IC 5-14-1.5.

(b) IC 5-14-1.5 does not apply to negotiating sessions or mediation.

Sec. 10. A proposed bargaining agreement that is subject to ratification by the parties is confidential.

Sec. 11. (a) This section applies only to state employees and university employees. Notwithstanding IC 5-28-14-10, a provision of a collective bargaining agreement is not enforceable to the extent the agreement:

(1) is inconsistent with an appropriation by the general assembly or another statutory limitation on the employer's funds, spending, or budget; or

(2) would substantially limit the performance of a statutory duty by the employer.

(b) If funds are not appropriated to meet the total compensation and benefit requirements of the collective bargaining agreements, the parties to the agreements shall meet immediately and negotiate alternative solutions designed to meet the agreements within the limitations of the total appropriations for compensation and benefits enacted by the general assembly.

(c) If the parties cannot agree to alternative solutions under subsection (b), the employer may implement the agreements within the limitations of the total appropriations for compensation and benefits enacted by the general assembly.

Sec. 12. (a) This section does not apply to the following:

(1) State employees or state employee bargaining units.

(2) Collective bargaining agreements that result from binding arbitration.

(b) The parties must ratify a proposed collective bargaining pact.

Chapter 13. Mediation and Factfinding

Sec. 1. (a) If:

(1) an impasse procedures agreement has not been reached under IC 5-28-12-5; or

(2) an impasse procedures agreement has been reached and a party fails to use the impasse procedures;

the PERB shall, upon the request of either party, appoint a neutral as mediator.

(b) The mediator shall bring the parties together to attempt to effectuate a settlement of the dispute, although the mediator may not compel the parties to agree.

Sec. 2. (a) This section does not apply if either party has advised

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the other party and PERB in writing before the commencement of negotiations of the party's desire not to use a factfinder. Parties that do not use a factfinder shall proceed to binding arbitration if mediation does not resolve the impasse.

(b) If the impasse persists ten (10) days after the mediator has been appointed, the parties shall select a factfinder from a list of neutrals maintained by the PERB.

(c) A factfinder selected under this section:

(1) shall:

(A) conduct a hearing;

(B) make written findings and recommendations for resolution of the dispute based upon the factors to be used by arbitrators under IC 5-28-14-8; and

(C) deliver the findings to the PERB, the employer, and the exclusive bargaining representative not later than fifteen (15) days after the date of the factfinder's appointment; and

(2) may:

(A) administer oaths; and

(B) request the PERB to issue subpoenas.

(d) The employer and the exclusive bargaining representative shall meet in negotiations to determine if the recommendations of the factfinder provide a basis for resolution of the dispute.

(e) If the dispute continues ten (10) days after the findings are submitted to the PERB under subsection (c), the report shall be made public by the PERB.

Sec. 3. The compensation and expenses of a mediator or factfinder shall be borne by the PERB.

Chapter 14. Binding Arbitration

Sec. 1. (a) If an impasse persists after the findings of fact and recommendations are made public by the PERB under IC 5-28-13-2 or if factfinding is not used and an impasse has persisted for ten (10) days after the appointment of a mediator under IC 5-28-13-1:

(1) the parties may continue to negotiate; or

(2) the PERB shall, upon request of both parties, arrange for binding arbitration under this chapter.

(b) The request for binding arbitration must be in writing and a copy of the request shall be served upon the other party.

(c) Notwithstanding subsection (a), if the parties have not agreed to a collective bargaining agreement by September 30 of an odd-numbered year, the PERB shall order the parties to initiate

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1 binding arbitration.

2 Sec. 2. (a) Each party shall submit to the PERB:

3 (1) a final offer on each of the unresolved issues with proof
4 that a copy of the final order was served on the other party;
5 and

6 (2) a copy of a draft of the proposed bargaining agreement to
7 the extent an agreement has been reached on an issue;
8 not later than seven (7) days after the date of the request for or
9 initiation of binding arbitration.

10 (b) The submission of the unresolved issues to the arbitrator
11 shall be limited to issues:

12 (1) that had been considered by the factfinder if factfinding
13 occurred; and

14 (2) upon which the parties have not reached agreement.

15 (c) All aspects of wages must be treated as a single issue. All
16 aspects of insurance must be treated as a single issue. All other
17 subjects of negotiations must be classified by the arbitrator into not
18 more than ten (10) broad categories, and each category must be
19 treated as a single issue.

20 (d) The parties may continue to negotiate all offers until an
21 agreement is reached or a decision is rendered by the arbitrator.

22 (e) Subsequent to the exchange of final offers, neither party may
23 amend or modify the party's position on an unresolved issue
24 without advance written approval from the other party.

25 Sec. 3. If the parties have not been able to select an arbitrator
26 during a period of not more than seven (7) days after the date of
27 the request for binding arbitration, a list of five (5) arbitrators
28 shall be submitted to the parties by the PERB. The parties shall
29 select an arbitrator from the list in accordance with IC 5-28-2-9.

30 Sec. 4. The arbitrators shall not engage in an effort to mediate
31 or otherwise settle the dispute in a manner other than that
32 prescribed in this chapter.

33 Sec. 5. A party may not discuss with the arbitrator, from the
34 time of the arbitrator's appointment until the arbitrator makes a
35 final determination, recommendations for settlement of the
36 dispute. The arbitrator may consult with a party ex parte only with
37 the concurrence of the other party.

38 Sec. 6. The arbitrator shall conduct a prehearing conference and
39 may do the following:

40 (1) Determine whether the issues are ready for adjudication.

41 (2) Accept stipulations.

42 (3) Schedule hearings.

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(4) Prescribe rules of conduct for the hearings.

(5) Order additional mediation.

(6) Take other action that may aid in the disposition of the impasse.

Sec. 7. Unless the parties reached agreement at the prehearing conference, the arbitrator may do the following:

(1) Hold hearings and administer oaths.

(2) Examine witnesses and documents.

(3) Take testimony and receive evidence.

(4) Issue subpoenas to compel the attendance of witnesses and the production of records.

(5) Petition the circuit or superior court in Marion County or the county in which a hearing is held to enforce an order compelling the attendance of witnesses and the production of records.

Sec. 8. In making an award, the arbitrator shall consider, in addition to other relevant factors, the following factors:

(1) Past collective bargaining agreements between the parties, including the bargaining that led up to the agreements.

(2) Comparison of:

(A) wages;

(B) hours; and

(C) conditions of employment;

of the employees in the bargaining unit with individuals doing the same work in the public or private sector, giving consideration to factors peculiar to the area and the classifications involved.

(3) The:

(A) interests and welfare of the public;

(B) ability of the employer to finance economic adjustments; and

(C) effect of the adjustments on the normal standard of services.

(4) Any other factor customarily considered in the negotiations of public sector labor agreements.

Sec. 9. (a) The arbitrator shall select, not later than fifteen (15) days or longer if agreed to by both parties after the arbitrator's first meeting, the most reasonable offer of:

(1) the final offers on each issue submitted by the parties; or

(2) the recommendations of the factfinder, if factfinding occurred;

on each unresolved issue.

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(b) The arbitrator's selection with respect to a particular issue may not deviate from a final offer or factfinding recommendation. The award must be accompanied by a written opinion. The arbitrator shall deliver copies of the opinion and the award not later than thirty (30) days or longer if agreed to by both parties after the close of the final hearing in the matter to the parties and the PERB.

Sec. 10. The selections by the arbitrator and the other issues agreed upon by the employer and the employee organization shall be the bargaining agreement between the parties. The agreement shall be considered final and binding upon the parties.

Sec. 11. The costs of an arbitrator shall be paid by the PERB, which shall be reimbursed by the two (2) parties to the arbitration under procedures for collection and payment established by the PERB.

Sec. 12. An arbitration award under this chapter is subject to judicial review under IC 4-21.5.

Chapter 15. Grievance Procedure

Sec. 1. A bargaining agreement must contain a grievance procedure culminating in binding arbitration of unresolved disputes over the interpretation or application of the collective bargaining agreement.

Sec. 2. A binding arbitration award with respect to a grievance may not amend, add to, or subtract from provisions of the collective bargaining agreement or other unresolved disputes.

Sec. 3. The grievance arbitration provisions of bargaining agreements are subject to IC 34-57-2.

Sec. 4. The costs of arbitration under this chapter shall be shared equally by the parties.

Sec. 5. IC 5-14-1.5 applies to grievance arbitration proceedings under this chapter.

Chapter 16. Strikes

Sec. 1. (a) It is unlawful for an employee or employee organization to take part in or assist in a strike against an employer.

(b) An employer may, in an action at law, a suit in equity, or another proper proceeding, take action against an employee or employee organization aiding or abetting in a strike for redress of the unlawful act.

(c) When an employee organization or affiliate of an employee organization engages in a strike or aids or abets in a strike, the employer may petition a circuit or superior court in:

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(1) the county where the violation occurred; or

(2) Marion County;

for remedy against the employee organization. The exclusive remedy against the employee organization, including remedy for violations of IC 34-47, is loss of the employee organization's dues deduction privilege for one (1) year.

(d) An employer shall not pay a public employee for a day when the public employee fails as a result of a strike to report for work as required by the employer.

Sec. 2. IC 22-6-1 does not apply to this article.

Sec. 3. IC 22-6-2 applies when in conflict with this article.

Chapter 17. Unit Determination and Selection of an Exclusive Representative

Sec. 1. Assignment of employees to units shall be made in the following manner:

(1) For employees of an employer described in IC 5-28-1-10(a)(1), by mutual agreement of the state personnel director and the exclusive bargaining representative of the state employees for the job classification of the individual employee.

(2) For employees of an employer described in IC 5-28-1-10(a)(2) or IC 5-28-1-10(a)(3), by the management designee and the exclusive bargaining representative.

Sec. 2. (a) If:

(1) the management designee and the exclusive bargaining representative cannot agree upon employee assignment to a unit; or

(2) an employee files a complaint with an assigned unit with the PERB;

the proper assigned unit shall be determined by the PERB.

(b) The determination under subsection (a) shall be made by the PERB after a hearing and the PERB's decision shall be based on but not be limited to the following considerations:

(1) Efficient administration of governmental operations.

(2) The existence of a community of interest among governmental employees.

(3) The effects on the governmental unit and governmental employees of fragmentation of units.

(4) Recommendations of the parties involved.

In making the determination, notice shall be given to all interested parties in accordance with the rules of the PERB, but the PERB need not follow IC 4-21.5.

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SECTION 6. IC 20-7.5-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. The school employer shall, on receipt of the written authorization of a school employee, deduct from the pay of ~~such~~ **the** employee any dues **or assessments** designated or certified by the appropriate officer of a school employee organization which is an exclusive representative of any employees of the school employer and shall remit such dues to such school employee organization. However, such deductions shall be consistent with the provisions of IC 22-2-6 and IC 22-2-7, and IC 20-6.1-5-11.

SECTION 7. IC 20-7.5-1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 14. ~~Strikes.~~ (a) It shall be unlawful for any school employee, school employee organization, or any affiliate, including but not limited to state or national affiliates thereof, to take part in or assist in a strike against a school employer or school corporation.

(b) Any school corporation or school employer may, in an action at law, suit in equity, or other proper proceeding, take action against any ~~school employee organization, any affiliate thereof, or any person~~ aiding or abetting in a strike, for redress of such unlawful act.

(c) ~~Where~~ **When** any exclusive representative engages in a strike, or aids or abets therein, ~~it shall lose the school employer or school corporation may petition a circuit or superior court in:~~

- (1) the county in which the violation occurred; or
- (2) Marion County;

for remedy against the exclusive representative. The exclusive remedy against the exclusive representative, including remedy for violations of IC 34-47, is loss of its dues deduction privilege for a period of one (1) year.

(d) No regulation, rule, or law with respect to the minimum length of a school year shall be applicable or shall require make-up days in any situation where schools in a school corporation are closed as a result of a school employee strike. A school corporation shall not pay any school employee for any day when the school employee fails as a result of a strike to report for work as required by the school year calendar.

SECTION 8. [EFFECTIVE UPON PASSAGE] **For bargaining units created under Executive Order 90-6 and extended under Executive Order 97-8 and Executive Order 03-35, assignments of employees to those units are considered to be made by the state personnel director upon passage of this act.**

SECTION 9. [EFFECTIVE UPON PASSAGE] **Notwithstanding IC 5-28, as added by this act, an employee organization that is**

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certified in an election by the public employees relations board created by Executive Order 90-6 and extended under Executive Order 97-8 and Executive Orders 03-44 and 03-45 as the exclusive negotiating organization for a bargaining unit shall be granted recognition as the exclusive bargaining representative for that unit.

SECTION 10. [EFFECTIVE UPON PASSAGE] (a) Notwithstanding IC 5-28-2-2, as added by this act, the terms of the persons initially appointed to the public employees relations board shall be as follows:

(1) Two (2) members appointed for a term of one (1) year.

(2) One (1) member appointed for a term of two (2) years.

(3) One (1) member appointed for a term of three (3) years.

(4) One (1) member appointed for a term of four (4) years.

(b) The governor shall make the initial appointments to the public employees relations board before July 15, 2004.

(c) This SECTION expires July 15, 2008.

SECTION 11. [EFFECTIVE UPON PASSAGE] (a) The public employees relations board established by IC 5-28-2-1, as added by this act, shall carry out the board's duties under this act under interim written guidelines approved by the governor.

(b) This SECTION expires on the earlier of:

(1) the date rules are adopted under IC 5-28-2-8, as added by this act; or

(2) January 1, 2006.

SECTION 12. An emergency is declared for this act.

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